ANNEXURE "D"

THE MYSORE PUBLC PREMISES (EVICTON OF UNAUTHORISED OCCUPANTS) BILL, 1973.

L. A. Bill No. 13 of 1973

A Bill to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters.

Whereas it is expedient to provide for the eviction of unauthorised occupants from public premises and for matters connected therewith or Incidental thereto;

Be it enacted by the Mysore State Legislature in the Twenty fourth Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Mysore Public Premises (Eviction of Unauthorised Occupants) Act, 1973.

(2) It extends to the whole of the State of Mysore.

(3) It shall be deemed to have come into force on the 18th January 1962 except sections 12 and 19 which shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "competent officer" means an officer appointed as such by the State Government under section 3;

(b) "corporate authority" means, any company or corporation referred to in sub-clauses (ii) and (iii) of clause (e) of this section;

(c) "premises" means any land or any building or hut or part of a building or hut and includes—

(i) the garden, grounds and out-houses if any appurataining to such building or hut or part of a building or hut, and

(ii) any fittings affixed to such building or hut or part of a building or hut for the more beneficial enjoyment thereof;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "public premises means any premises belonging to or allotted to State Government or taken on lease or requisitioned by, or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of—

(i) local authority;

(ii) any company as defined in section 3 of the Companies Act, 1955 (Central Act I of 1956) in which not less than fifty one per cent of the paid up share capital is held by the State Government; and

(iii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956) established by or under a State Act and owned or controlled by the State Government.

Explanation.—For the proposes of this clause 'local authority' means—

(a) municipal corporation;

(b) a town or city municipal council; and

(c) the City Improvement Trust Board constituted under the City of Mysore Improvement Act, 1903 (Mysore Act 3 of 1903) and the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945);

(f) "rent" in relation to any public premises, means the consideration payable periodically for the authorised occupation or the premises, and includes,—

(i) any charge for electricity, water or any other services in conection with the occupation of the premises,

(ii) any tax (by whatever name called) payable in respect of the premises;

where such charge or tax is payable by the State Government, local authority or the corporate authority;

(g) "unauthorised occupant", in relation to any public premises, means the occupation by any person of the public premises, without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority

(whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

3. Appointment of competent officers.—The State Government may, by notification in the official Gazette,—

(a) appoint,—

(i) in respect of its premises such officers, not below the rank of a class I officer of the State Civil Services;

(ii) in respect of any premises of a local authority such officers of the local authority; and

(iii) in respect of any premises of a corporate authority, such officers of the corporate authority,

as it thinks fit to be competent officers for the purpose of this Act; and

(b) define the local limits within which or the categories of public premises in respect of which the competent officres shall exercise the powers confered and perform the duties imposed, on competent officers by or under this Act.

4. Issue of notice to show cause against order of eviction.—(1) If the competent officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the competent officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of or claim interest in the public premises to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The competent officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous

part of the public premises, and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the competent officer shows or has reason to believe that any persons are in occupation of the public premises then, without prejudice to the provisions of sub-section (3) he hall cause a copy of the notice to be served on every such person by registered post or by delivering or tendering it to that person or failing service by the means aforesaid in such other manner as may be prescribed.

5. Eviction of unauthorised occupants.—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the competent officer is satisfied that the public premises are in unauthorised occupation, the competent officer may on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof, or any part thereof, cause copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within forty five days from the date of affixture of the order under sub-section (1), the competent officer or any other officer duly authorised by the competent officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

6. Disposal of property left on public premises by unauthorised occupants.—(1) Where any persons have been evicted from any public premises under section 5, the competent officer may, after giving fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in atleast one newspaper having circulation in the locality and after proclaiming the contents of the notice in the locality by beat of drum, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1) the sale proceeds shall, after deducting the expenses of the sale and the amount, if any due to the State Government or a local authority or

a corporate authority on account of arrears of rent, damages or costs, be paid to such person or persons, as may appear to the competent officer to be entitled to the same :

Provided that where the competent officer in unable to decide as to the peson or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.

7. Power to recover rent or damages in respect of public premises as arrearss of land revenue.—(1) Where any person is in arrears of rent payable to the State Government or a local authority or a corporate authority, in respect of any public premises, the competent officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the competent officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to showcause within such time as may be specified in the notice why such order should not be made, and until his objections, if any and any evidence he may produce in support of the same, have been considered by the competent officer.

8. Rent to be recovered by deduction from salary or wages of employee.—Without prejudice to the provisions of section 7, where any person to whom public premises have been allotted is an employee of the State Government, or a local authority or a corporate authority and is in arrears of rent payable in respect of such public premises allotted to him the amount of rent due in respect of such premises shall on a requisition in writing in that behalf by the competent officer be liable to be deducted from salary or wages payble to such

person. On receipt of such requisition, the head of the Government department or officer under whom such person is employed or the officer of a local authority or a corporate authority disbursing the salary of such person as the case may be shall deduct from the salary or wages payable to such person the amount specified in the requisition, and pay the amount so deducted to the competent officer in satisfaction of the amount due by him.

9. Powers of competent officers.—A competent officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of documents ;

(c) any other matter which may be prescribed.

10. Appeals.—(1) An appeal shall lie from every order of the competent officer made in respect of any public premises under section 5 or section 7 to an appellate officer who shall be the District Judge having jurisdiction over the area.

(2) An appeal under sub-section (1) shall be preferred.—

(i) in the case of an appeal from an order under section 5 ,within thirty days from the date of affixture of the order under sub-section (1) of that section ; and

(ii) in the case of an appeal from an order under section 7 within thirty days from the date on which the order is communicated to the appellant :

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the competent officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The cost of any appeal under this section shall be in the discretion of the appellate officer.

11. Finality of orders.— Save as otherwise expressly provided in this Act, every order made by a competent officer or appellate officer under this Act shall be final and shall not be called in question in any orginal suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

12. Offences and penalty.—(1) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(2) Any magistrate convicting a person under, sub-section (1) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

13. Power to obtain information.—If the prescribed officer has reason to believe that any person or persons are in unauthorised occupation of any public premises, he or any other officer authoriesd by him in this behalf may require those persons or any other person to furnish information relating to the names and other particulars of the persons in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

14. Liability of heirs and legal representatives.—(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be continued against the heirs or legal representatives of that person.

(2) Any amount due to the State Government or the local authority or the corporate authority from any person whether by way of arrears of rent or damages or costs shall, after the death of

the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

15. Recovery of rent, etc., as an arrears of land revenue.— If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the cost awarded to the State Government or the local authority or the corporate authority under sub-section (5) of section 10 or any portion of such rent, damages or costs, within the time, if any, specified therefor in the order relating thereto, the competent officer may issue a certificate for the amount due to the Deputy Commissioner who shall proceed to recover the same as an arrear of land revenue.

16. Bar of jurisdiction.—No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in un-authorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the local authority or the corporate authority under sub-section (5) of section 10 or any portion of such rent, damages or costs.

17. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the State Government or the local authority or the corporate authority or the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

18. Power to make rules.—(1) The State Government may, by notification published in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served ;

(b) the holding of inquiries under this Act;

(c) the procedure to be followed in taking possession of public premises;

(d) the manner in which and the principles according which damages for unauthorised occupation may be assessed;

(e) the manner in which appeals may be preferred and the procedure to be followed in appeals;

(f) any other matter which has to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. Repeal and savings.—The Mysore Public Premises (Eviction of Unauthorised Occupants) Act, 1961 (Mysore Act 3 of 1962) is hereby repealed :

Provided that the provisions of section 6 of the Mysore General Clauses Act, 1899 (Mysore Act III of 1899) shall be applicable in respect of the repeal of the said enactment and sections 8 and 24 of the said Act shall be applicable as if the said enactment had been repealed and re-enacted by this Act.

Statement of Objects and Reasons.

The Public Premises (Eviction of Unauthorised Occupants) Act, 1962 (Mysore Act 3 of 1962) was enacted to provide for a speedy remedy for the eviction of unauthorised occupants from public premises.

In Northern India Caterer Private Ltd., **Vs.** The State of Punjab (A.I.R. 1967, S.C. 1581), the Supreme Court declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovedy) Act, 1959 (31 of 1959) void on the ground that the section is discriminatory and violative of Article 14 of the Constitution, inasmuch as it conferred an additional remedy over and above the usual remedy by way of suit and provided two alternative remedies to the Government, leaving it to the unguided discretion of the Collector to resort to one or the other of the procedures. The object and procedure prescribed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 the Central Act being similar to those in the Punjab Act and in order to avoid a risk of the Central Act also being struck down by the Supreme Court. If challenged, on similar grounds of discrimination Central Acto f 1958 was suitable amended by the Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968 (Central Act) in order to overcome the decrees of the Court. By the amendment act civil courts were precluded from entertaining any suit or proceding in respect of the eviction of persons who are in unauthorised occupation of public premises and in respect of the recovery of the arrears of rent or damages from such persons.

The vires of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended by the Public Premises (Eviction of Unauthorised Occupants) Amendments Act, 1968 (Central Act) was again recently challenged by way of writ petitions in the Delhi High Court and certain other High Courts. By a majority judgement, the Delhi High Court in P. L. Mehra Vs. D. R. Khanna (AIR 1972 Delhi-1) have held the whole of the Act as void under Article 13(2) of the Constitution as it was found to contravene Article 14 thereof. The Court also observed that as the Act of 1958 (Central Act) was void, the amending Act of 1968 (Central Act) was also ineffective. Similar views have also been held by the High Court of Allahabad (in AIR 1971 Al. 268), Since the court decisions referred to above created serious difficulties for the Government inasmuch as the proceedings taken by the competent officers appointed under the Act either for the eviction of persons who are in unauthorised occupantion of public premises or for the recovery of rent or damages from such persons having been found to be null and void, the Central Act of 1958 was reenacted as Central Act 40 of 1971, to restore a speedy remedy for the eviction of persons who are in authorised occupation

of Public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution and the judicial pronouncements, referred to above.

The Mysore Public Premises (Eviction of Unauthorised Occupants Act 1961) Mysore Act 3 of 1962 is also on the lines of the Central Act of 1958. Further this Act was also amended by Mysore Act 32 of 1969 on the lines of the Central Amendment Act of 1968. The provisions of this Act are therefore vulnerable like those the Central Act.

In view of the position explained above it is necessary and safe to reenact the Mysore Act also and accordingly, it is proposed to re-enact the Mysore Public Premises (Eviction of Unauthorised Occupants) Act, 1961 as amended from time to time. The law proposed to be re-enacted is to be given retrospective effect from 18th January 1962 the date on which the 1961 Act came into force. It is also proposed to make a suitable validating provision providing that anything done or any action taken or purported to have been done or taken under the 1961 Act shall be deemed to be valid and deffective as if such thing or action was taken or done under the corresponding provisions of the proposed law.

Hence this Bill.

Financial Memorandum

The Bill provides among others for appointment by Government of officers not below the rank of Class I Officer of the State Civil Services in respect of its premises. No additional appointments will be made and wherever necessary only officers doing other works will be appoined to do this work also. Therefore for the enforcement of the proposed law no extra expenditure is involved.

Memorandum Regarding Delegated Legislation

Clause 4.—Sub-clause (3) of this clause empowers the State Government to prescribe by rules, the other manner in which the competent officer shall cause the notice to be served.

Clause 7.—Sub-clause (2) of this clause empowers the State Government to prescribed by rules the principles for assessment of damages caused to any public premises by a person in unauthorised occupation.

Clause 9.—Item (c) of this clause empowers the State Government to prescribe by rules the other matters in respect of which the competent officer shall for the purpose of holding any inquiry under the Act have the powers of a Civil Court under the Code of Civil Procedure, 1908.

Clause 13.—This clause empowers the State Government to prescribe by rules the officer for the purposes of the said clause.

Clause 18.—This clause empowers the State Government to make rules for purposes specified therein. The rules made thereunder aer required to be laid before both the Houses of the State Legislature and subject to modifications made by both the Houses.

The delegation of proposed legislative power is of a normal character.

N. HUTCHAMASTHY GOWDA,

Te. HANUMANTHAPPA,
Secretary.